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CONTEMPORARY FORMS OF SLAVERY

PROGRAMME OF ACTION FOR THE PREVENTION OF THE SALE OF CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY

Report of the Working Group on Contemporary Forms of Slavery pursuant to paragraph 6 of Sub-Commission on Prevention of Discrimination and Protection of Minorities resolution 1992/2

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Introduction

1. In its resolution 1992/2, the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the Secretary-General, pursuant to Commission on Human Rights resolution 1992/74 of 5 March 1992, to invite all States to inform the Sub-Commission of measures adopted to implement the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, contained in the annex to resolution 1992/74.

The Sub-Commission also requested the Working Group to examine the state of the implementation of the Programme of Action at its eighteenth session and to transmit, through the Sub-Commission, a report thereon to the Commission at its fiftieth session. In accordance with the above requests, the Secretary-General sent a note verbale to all States on 6 November 1992 and prepared a report (E/CN.4/Sub.2/AC.2/1993/8), containing the replies received, for the consideration of the Working Group. Having examined that report, the Working Group decided to transmit it, through the Sub-Commission, to the Commission at its fiftieth session.

I. STATES

Austria

[Original: English]
[21 August 1992]

2. Austria informed the Working Group on Contemporary Forms of Slavery that although there are no specific provisions concerning the sale of children, the general provision of section 195 of the Austrian Penal Code against abduction of minors (Entziehung eines Minderjährigen aus der Macht des Erziehungsberechtigten) is applicable to this particular case.

3. The Federal Youth Welfare Act of 1989 (Federal Law Gazette 161/1989) obliges the Laender (provinces) to enact laws regulating the procedure of adoptions.

4. In general, the Youth Welfare Boards of the Laender have the sole right to initiate an adoption here as well as in foreign countries. The Laender governments may, however, authorize private institutions to conduct such activities. The Youth Welfare Act of 1979 determines that financial rewards for the arrangement of adoptions are strictly forbidden.

5. There has never been any evidence that children were sold for the purpose of adoption. However, violations against the prohibition of such cases would be subject to punishment under section 195 of the Austrian Penal Code (see above).

6. There is no evidence that the sale of children for labour purposes occurs in Austria.

Brazil

[Original: English]
[30 November 1992]

7. The Government of Brazil informs the Working Group on Contemporary Forms of Slavery that the Department of Federal Police (DPF) has strengthened its action in combating the phenomenon of the sale of children since 1973, when the first allegation related to the problem - the trafficking of 60 Brazilian children to Sweden by a foreign couple - was brought to its attention. Among the actions carried out since then, those of an administrative and preventive nature have prevailed after the Federal Police realized that the issuing of passports, by its Division of Maritime, Air and Border Police (DPMAF), was directly connected to the issuing of international air tickets and, therefore, to the international trafficking of children.

8. It has also been noted that the international trafficking of children is closely linked to shortcomings occurring before the process of international adoption is initiated. In order to be able to adequately monitor both legal and illegal steps before adoption, to avoid adoption being used as a disguise to traffic children across the border (including the abduction of children for that purpose), as well as to assess the pace of those criminal practices, the DPMAF decided to implement the following comprehensive administrative measures:

(a) Decentralization of its units to make sure that all necessary conditions were met when the biological mother gave her consent for the adoption of her child by a foreign couple. This procedure should be applied when doubts arise related to the legality of the adoption process at the moment of requesting a passport for a child adopted by a foreign couple;

(b) Preparation of a monthly list with the names of all children to whom Brazilian passports have been issued to travel accompanied by foreign adoptive parents, as well as the names of such parents and passport numbers;

(c) Fulfilment of all preconditions required - in accordance with article 9, paragraph 5 *in fine* of the regulation on passports approved by Decree No. 84.541/80 - for issuing a passport requested for an adopted child (presentation of a certificate of birth and the judicial warrant);

(d) Assurance that adoptions of Brazilian children by foreign couples were made in accordance with the provisions of articles 20 and 28 of Decree 6.697.79 (the former Code on Minors), which stipulates that adoption will be allowed providing that the child's situation was irregular, that adoption took place in the presence of the foreign parents and that a judicial warrant was issued before the necessary documents were legalized by the registry office. If any of these conditions is not fully met, the police authority submits the adoption process to the local judge of minors;

(e) Transmission, since 1985, of the names of children adopted by foreigners to the DPF's central computerized unit under a special code for expeditious identification;

(f) Establishment, in 1982 when the phenomenon of child trafficking became known, of a working group to study the extent of the problem and propose measures aimed at minimizing its effects. The working group put forward the following recommendations in its final report:

(i) Adoptions made under article 375 of the Civil Code or those subject to decisions by the judge of minors should only be authorized in the presence of the adopting couple;

(ii) The registry offices should draft the titles of adoption in the presence of a representative of the Attorney-General's office;

(iii) If the adopting couple lives or intends to live abroad, information should be provided to the Brazilian diplomatic or consular authorities in the concerned country on the conditions of health, education and assistance granted to the adopted child (such duties should be clearly defined in the adoption process);

(iv) As immediate steps to minimize the negative trends of this problem, the working group suggested that:

a. Contacts be established with the states' judiciaries (Corregodorias de Justiça) in order to reiterate to registry and notary's offices the need for a judicial warrant for the adoption of children in irregular situations;

b. Verification, by the Ministry of External Relations, through its diplomatic and consular missions abroad, be undertaken of the conditions under which Brazilian children adopted by foreigners live, as well as the real objectives of adoption;

c. Information regarding the trafficking of children be centralized in the Division of Political and Social Order in order to facilitate its analysis and to unify procedures;

d. DPMAF instruct all Passport Services to undertake the necessary inquiries when passports are requested for Brazilian new-borns by foreign parents. Individuals violating the law should be subject not only to criminal procedures but also to expulsion under the provisions of Decree 6.815/80;

e. Its report be disseminated among the regional offices of DPF. The working group's report was approved by the Minister of Justice who transmitted the document to the Department of Legislative Affairs, for further

consideration of changes in the adoption legislation, and the Department of Judicial Affairs, to reiterate the importance of judicial warrants for the adoption of children in irregular situations;

(g) Definition, by the Minister of Justice, of the competence of judges of minors or magistrates acting as such, in accordance with local legislation, to authorize the concession of passports for children;

(h) Recommendation that state judiciaries define such competence in order to ensure all legal conditions for issuing passports for minors, bearing in mind the particularities of the state judiciary organization of the states and the provisions of article 9, paragraph 2, of the regulation on passports adopted on 11 March 1980 by Decree 84.541.

9. The Working Group's report has gained wide support within the National Congress which approved Decree 7.251 on 19 November 1984 introducing changes in article 245 of the Penal Code with a view to defining the international trafficking of children (para. 2) and to raise the penalties for the perpetrators of such crimes.

10. In 1986, when the problem of the trafficking of children became widely recognized but remained difficult to characterize as a crime aimed at obtaining profits, DPMAF put forward the following suggestions:

(a) Transfer - in accordance with article 10, I and II of Decree 5.010, dated 30 May 1966 - to the federal judiciary of the competence to try all adoption cases involving Brazilian children and foreign couples. This proposal was not carried out but contributed to an important debate on the competence of the federal justice system to prosecute and try crimes of trafficking in children; this has been incorporated in the Federal Constitution;

(b) Presence of the foreign couple from the initiation of the adoption procedures, which can be carried out in their own language, with simultaneous interpretation into Portuguese by translators nominated by the federal judge;

(c) Collection of the following documents for a judicial decision on adoption by foreigners: identity cards of the couple, declaration by the competent judge of minors that the child was in an irregular situation; declaration by the biological mother and father, if any, ratifying the decision to authorize the adoption and stating the motives of such a decision; official translation of the marriage licence, certificates testifying to lack of criminal antecedents or judicial separation of the foreign couple, as well as proof that their economic and financial situation would allow for the necessary well-being of the child they wish to adopt;

(d) The requirement that the judicial sentence authorizing the adoption stipulates that the adopting couple should bring the adopted child annually to the Brazilian Consulate in their country for evaluation of his/her treatment, until he/she is no longer considered a minor according to that country's

legislation. The diplomatic or consular authority would have the duty of sending periodic reports to the federal judiciary through the Ministry of External Relations;

(e) A prohibition against foreign couples not permanent residents in Brazil to adopt children under articles 368 and 375 of the Civil Code and the former Code of Minors, except for the case stipulated in its article 20;

(f) A statement regarding the objective of the trip should be included in the passports of foreign couples who request visas in the diplomatic or consular missions with a view to adopting children in Brazil. Such information should also be transmitted by the competent mission abroad to the Ministry of External Relations.

11. With the sole exception of the suggestion in subparagraph (a), all the others have been incorporated in a direct or indirect way in the Statute of the Child and Adolescent. The positive results of actions carried out by DPF in this area led to its participation in a working group established in 1988 by resolution 01/88 of the Minister of Justice. This preliminary work served as a basis for the Statute of the Child and Adolescent which clearly qualifies illegal acts related not only to trafficking but also to international adoption.

12. DPF actions kept pace with the progression of international trafficking in children, allowing the opening of 264 police investigations in the country, including those carried out by the police of the states. Those inquiries enabled the police to identify 33 methods that have been used for trafficking in children. DPF has also been looking into the practices gangs use to "launder" funds gained from trafficking in children, notably investments in real estate and automobile markets and contributions to political campaigns. Other areas of concern have been the linkage between trafficking in children and other related crimes, such as extortion of traffickers by the biological parents of the adopted child, abduction of children for sale abroad and the use of stolen cars as payment for trafficking services.

13. Nevertheless, the federal police are conscious that preventive actions seem to constitute the best approach to combat the international trafficking in children. The emphasis on prevention results from the fact that curative measures have not led to encouraging results: the several investigations carried out up to date resulted in only one conviction for that crime. Furthermore, identifying cases of trafficking by the resulting profits has proved difficult. On one hand, the intermediary always alleges that the price paid corresponded to repayment of expenses incurred during the adoption process and to professional fees and, on the other hand, the adopting couple does not ask for any receipt for the transaction.

14. Preventive actions carried out at present consist of:

(a) Establishment of computer databases on international adoptions (10,685 up to now);

(b) Investigation of all acts preceding adoption. This measure has had positive effects for both the adopting couple and to the judiciary. DPF is receiving increasingly more requests for information from judges before adoptions are authorized. Unfortunately, however, there are no unanimous views on this controversial question. Some judges for children and adolescents in São Paolo have reacted against what they call a control over adoption procedures, alleging infringements of privacy and external monitoring of judicial acts. These allegations do not seem to be well founded as DPF action is carried out under strict secrecy and without any interference whatsoever in the judiciary's competence;

(c) Improved control over the procedures of issuing passports to adopted minors and of monitoring their departure to the countries of residence of the adopting parents, noting that the Statute stipulates that the trip is authorized only if the adoption is definitive;

(d) Enhanced cooperation with INTERPOL in the exchange of information on adoptions and trafficking. This collaboration includes participation of DPF officials in conferences and seminars held by that international entity on these matters;

(e) Control of departures to other countries and return to Brazil of pregnant women, in order to verify if their new-borns re-enter the country;

(f) Elaboration of a register of agencies for international adoption that are active in Brazil;

(g) Transmission to the executive, legislative and judicial powers of all relevant information related to trafficking and other crimes against children and adolescents, especially for Inquiry Parliamentary Commissions (CPIs).

15. In spite of improvements in the legislation, the number of adoptions has progressively increased, together with correlated crimes. Combating these phenomena requires an adequate infrastructure for the development of systematic work at the national and international levels. DPF is, therefore, considering the establishment of a self-financed governmental programme for such work with resources from registration fees to be charged to adoption agencies and nurseries active in Brazil and double fees charged for issuing passports for adopted children and adolescents. This programme, possibly to be called "National Programme for Prevention of International Trafficking in Children", would have as one of its priorities the improvement of monitoring of border cities which would often be used as transit points for adopted children.

16. In order to be able to check these allegations, representatives of DPF proposed, at an international seminar on crimes against minors held by INTERPOL at Lyons, France, from 7 to 9 April 1992, that emigration services of countries receiving Brazilian children consider providing to national authorities copies of pages 2 and 3 of their passports. The proposal was, however, rejected with the argument that a too-large number of children would be affected to detect just a few cases of trafficking.

Burkina Faso

[Original: French]
[14 April 1992]

17. The action taken to combat the exploitation of child labour and child prostitution has been extensive and, in particular, includes:

(a) Keeping street children and youth under supervision without restricting their freedom or placing them in specialized re-educational and vocational training institutions;

(b) A policy of keeping rural youth in the villages through the activities of "young farmer training centres";

(c) Encouraging teachers of the Koran to take effective charge of beggar children who come to them for religious instruction and, at the same time, alerting them to certain forms of enslavement such as the situation of young girls and boys employed without any particular status or appropriate remuneration by households, and that of young girl immigrants, in particular from countries of the subregion, exploited by procurers.

18. As for the traffic in persons and the exploitation of the prostitution of others, it is clear, first of all, that procuring is on the increase in Burkina Faso. Unfortunately, the relevant provisions of the Criminal Code, though severe, are not in fact being applied. However, it is to be hoped that the new Criminal Code about to enter into force will be more effectively implemented in this particular respect.

19. It is also a fact that forced and/or early marriages persist and that (in some regions) certain married women are still being compelled to work to reimburse their husbands for the excessive marriage portion he has had to pay.

20. To prevent such situations from arising, the Individual and Family Code provides:

(a) For a minimum age for marrying of 17 for girls and 20 for boys, subject to exceptions authorized by the court;

(b) For observance of the principle of mutual consent to the marriage on the part of the future husband and wife and the principle of matrimonial freedom;

(c) For prohibition of the dowry as a fundamental condition of marriage.

21. It should be noted that the revised Criminal Code (1946) takes into account the new forms of exploitation, in particular with regard to children.

Finland

[Original: English]
[9 November 1992]

22. Although the sale of children does not seem to constitute a problem in Finland, special attention should be given to attitudes towards this problem.

23. Trafficking in and sale of children are punishable under the law in force (chapter 25, section 1 (abduction), section 1 (a) (white slavery) and section 2 (child abduction) of the Penal Code). However, the actual concept of "sale of children" is not used in the valid provisions. Instead, it is stated that whosoever acquires control over a child with the intent of, e.g., delivering him into a condition of restraint abroad or into helplessness in a mortally dangerous place (section 1), using the child for immoral purposes (section 1a) or using him in begging or for another mercenary or immoral purpose or activity (section 2), shall be punished.

24. Chapter 25 of the Penal Code is now being revised in connection with the overall reform of the Penal Code. A government bill to that effect was to be presented to Parliament towards the end of 1992. The bill includes a proposal for a new section 3 of chapter 25, concerning abduction. According to this section, an offence would be considered an abduction if anyone through violence, threat or treachery acquires control over a child who has not reached 15 years of age, with the intent of using the child as an object of sale of humans. Attempts have been made to lay down the essential elements of the offence in such a manner as to ensure that all the different cases relating to the sale of children would be included. For punishment, imprisonment of 2 to 10 years is proposed, which is an extremely severe punishment in the Finnish penal scale.

25. Crimes involving trafficking in and the sale of children may be classified as grave offences. The extradition of an offender to the requesting country is possible under certain additional conditions.

26. Paragraphs 41 and 42 of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography relate to adoption, especially inter-country adoption. In 1985, a new Adoption Act entered into force in Finland (153/85), which includes provisions on inter-country adoptions. Pursuant to section 21 of the Act, only those Municipal Boards of Social Welfare and other bodies that have been authorized by the National Agency for Welfare and Health may render an inter-country adoption service. Under the same section, the Municipal Boards of Social Welfare and bodies rendering similar services that have obtained the authorization referred to above may cooperate with such a foreign authority, society or other foreign service-rendering body only as has been recognized by the Council of Adoption Affairs operating subject to the Ministry of Social Affairs and Health.

27. According to section 3 of the Adoption Act, a Finnish court shall not grant an adoption if any remuneration for the adoption has been given or promised. Adoption shall not be granted if anyone other than the adopter has, with a view to the adoption being granted, made or undertaken to make remunerative payments for the maintenance of the child. According to

section 53 of the Act, anyone who without an authorization, by announcing in a newspaper or otherwise, publicly offers a child for adoption is guilty of a punishable offence. Moreover, placing a child with the purpose of adoption, without authorization, in a private home to be brought up there is a punishable offence, if the agent is other than the child's parent or his/her legal custodian.

28. With respect to paragraph 43 of the Programme of Action, the Ministry of Justice notes that the Decree on the Registration of Births and Deaths (824/70) contains provisions on the issuance of birth certificates and on the report for entry into the population register. Pursuant to section 9 of the Adoption Act, the adoption of a minor child may not be normally granted without his parents' consent. Under section 10 of the Act, before the parents give their consent, a consultation shall be arranged with them, whereby all the social services and economic support benefits available shall be explained to them.

29. The Hague Conference on Private International Law is preparing a new convention on the adoption of foreign children. Finland is involved in the preparation of the convention.

Germany

[Original: English]
[6 October 1992]

30. Germany states that there are no specific bilateral or multilateral arrangements between Germany and other countries concerning judicial assistance in the prosecution of the sale of children in relation to adoption or child labour, organ transplantation, child prostitution or child pornography. Transborder prosecution of such crimes is based on general agreements providing for mutual judicial assistance or informal cooperation.

31. In Germany it is an offence punishable under the Protection of Minors in Employment Act to assign children to work or other services comparable to that done by employees or home workers. Children and juveniles are protected from sexual abuse and prostitution by, in particular, the following provisions of the Penal Code: section 174 (sexual abuse of wards); section 175 (homosexual acts); section 176 (sexual abuse of children); section 180 (encouragement of sexual acts by minors); section 180 (a) (2) to (5) (encouragement of prostitution); section 182 (seduction). Children and juveniles are also protected by the general provisions of section 177, section 178 (sexual coercion), section 181 (trade in humans) and section 181 a (procuring). It is proposed to replace sections 175 and 182 of the Penal Code with a standard provision to protect male and female persons under 16 from sexual abuse.

32. In recent years, a new form of sexual abuse of children has emerged through the sale and distribution of pornographic video films. A large proportion of such films are made by amateurs, who film children from their own family and exchange or sell them privately. It has been estimated that video films circulate among 30,000 "lovers" of child pornography in Germany. Videos are sometimes produced on a commercial basis and rented or sold. Some

parents allow their children to be used in such productions for a fee. Many are made with children from the third world, either in Germany or in their native countries.

33. Unscrupulous profit-seeking is undoubtedly the chief motive for trade in child pornography. Since the production and dissemination of child pornography are punishable offences under section 184 (3) of the Penal Code, heavy "illegality" surcharges are added to the price. The punishment for such offences (imprisonment up to 12 months or a fine) is not considered an adequate deterrent in view of the profits to be made. The mere possession of child pornography material is not an offence. Greater efforts must be made to inform the public about the short- and long-term harmful effects suffered by children who are used as "actors" in pornographic films.

34. It is often difficult for the authorities to effectively prosecute offenders because the production and distribution of child pornography are difficult to prove, especially since the introduction of the new medium of video film. The entire production process can be completed without assistance. Furthermore, such films are not marketed via the normal networks, i.e. through videotheques and sexshops, but mainly through box-number advertisements - often in disguised form - in magazines or tabloid newspapers. Since the mere possession of such material is not punishable, dealers in video cassettes of this nature can pose as collectors by keeping only the "master" and making copies for sale as required.

35. An extensive list of measures to prevent and eliminate the production, distribution and use of child pornography has been introduced in the German Bundestag. A bill submitted by the Federal Government is intended:

(a) To increase the penalty for distributing child-pornography publications (including audio and video cassettes) to up to three years' imprisonment;

(b) To make pornographic depictions of children an offence carrying a penalty of up to 12 months or a fine;

(c) To make it easier to confiscate child-pornography products.

36. The sexual abuse of children which is the subject of such films or photographs carries a penalty of up to 10 years' imprisonment (section 176 of the Penal Code). The publication and distribution of child pornography, including the preparations for such (production, delivery, etc.) are absolutely banned and carry a penalty (section 184 (3) of the Penal Code). The possession of child pornography is to be made a punishable offence.

37. Section 184 (3) of the Penal Code relates to all pornographic writings within the meaning of section 11 (3) dealing with the sexual abuse of children. Under that provision, audiovisual recordings as well as illustrations and other representations are treated in the same way as writings.

38. A number of criminal proceedings are being conducted with regard to the production and distribution of child pornography. The biggest cases are probably those pending with the Public Prosecutor's Office in Hanover and Frankfurt/Main.

Iraq

[Original: Arabic]
[28 December 1992]

39. The Government of Iraq states that the problem of the sale of children for whatever purpose (sexual exploitation or any form of labour, adoption, criminal activities or traffic in organs, etc.) does not really exist in Iraq and therefore has no social consequences in that country. Such acts fall within the comprehensive purview of Iraqi law, which regards them as among the most serious offences which are punishable under article 13 of the Penal Code, even if they are committed outside Iraq. In this respect, Iraqi law resembles other contemporary legal systems.

40. In view of the provisions of the Islamic Shariah, the system of adoption in the form in which it is normally practised in some States does not apply in Iraq. However, if a person wishes to adopt a child, he can take the child into his family as if he were the child's real father, with all the legal consequences that this entails. From the humanitarian standpoint, this system ensures additional rights for the child.

Japan

[Original: English]
[25 March 1993]

41. In Japan the following punitive provisions regarding the sale of children apply:

(a) Penal Code. Article 224 (kidnapping or abduction); imprisonment at forced labour for not less than three months nor more than five years); article 225 (kidnapping or abduction for profit; imprisonment at forced labour for not less than one year nor more than 10 years); article 226 (kidnapping or abducting for transportation to foreign country and traffic in persons; imprisonment at forced labour for a limited term of not less than two years); article 227, paragraph 1 (assistance in kidnapping or abduction; imprisonment at forced labour for not less than three months nor more than five years); article 227, paragraph 3 (receiving a kidnapped or abducted person; imprisonment at forced labour for not less than six months nor more than seven years);

(b) Child Welfare Law. Article 60, paragraph 2 (imprisonment at forced labour for not more than one year or a fine of not more than 300,000 yen), a violation of article 34, paragraph 1, item (8) (acting as intermediary for the upbringing of a child (under 18 years of age) for the purpose of gaining profit).

42. Concerning child prostitution, article 177 of the Penal Code makes it a crime to have sexual intercourse with a girl under 13 years of age, regardless of its method or means. Also, article 60, paragraph 1, of the Child Welfare Law makes it a crime to induce a child (under 18 years of age) to practise obscene acts (sexual intercourse), and a person who instigates another and thereby forces a child to have sexual intercourse with him is also punished.

43. The following punitive laws regarding the prevention of obscene acts involving children and child prostitution apply:

(a) Penal Code. The second half of article 177 (raping a girl under 13 years of age; imprisonment at forced labour for a limited term of not less than two years);

(b) Prostitution Prevention Law. Article 6 (act of procuring a prostitute, etc.; imprisonment at forced labour for not more than two years or a fine of not more than 50,000 yen); article 7 (act of embarrassing a female to engage in prostitution; imprisonment at forced labour for not more than three years or a fine of not more than 100,000 yen); article 8, paragraph 1 (act of the person who committed the offence in article 7 receiving the whole or a part of the money paid for prostitution; imprisonment at forced labour for not more than five years or a fine of not more than 200,000 yen); article 8, paragraph 2 (act of receiving the whole or a part of the money paid for prostitution by taking advantage of kinship relations; imprisonment at forced labour for not more than three years or a fine of not more than 100,000 yen); article 9 (act of offering financial benefits for the purpose of making a female engage in prostitution; imprisonment at forced labour for not more than three years or a fine of not more than 100,000 yen); article 10 (act of making a contract for making a female engage in prostitution; imprisonment at forced labour for not more than three years or a fine of not more than 100,000 yen); article 11 (act of furnishing a place for prostitution; imprisonment at forced labour for not more than three years or a fine of not more than 100,000 yen and, if such furnishing is done continuously as a business, imprisonment at forced labour for not more than seven years and a fine of not more than 300,000 yen); article 12 (act of making it one's business to make a female engage in prostitution; imprisonment for not more than 10 years and a fine of not more than 300,000 yen); article 13, paragraph 1 (act of offering funds, etc. needed for making it one's business to furnish a place for prostitution; imprisonment at forced labour for not more than five years and a fine of not more than 200,000 yen); article 13, paragraph 2 (act of offering funds, etc. needed for making it one's business to make a female engage in prostitution; imprisonment at forced labour for not more than seven years and a fine of not more than 300,000 yen);

(c) Law for Ensuring the Proper Administration of the Business of Dispatching Workers and for Adjusting the Conditions of Employment of the Workers Dispatched. Article 58 (act of dispatching workers to make them engage in a job which is harmful from the standpoint of public morals; imprisonment at forced labour for not less than one year nor more than 10 years or a fine of 50,000 up to 1 million yen);

(d) Child Welfare Law. Article 60, paragraph 1 (imprisonment at forced labour for not more than 10 years or a fine of not more than 500,000 yen), violation of article 34, paragraph 1, item (6) (act of making a child (under 18 years of age) commit obscene acts); article 60, paragraph 2 (imprisonment at forced labour for not more than one year or a fine of not more than 300,000 yen), violation of article 34, paragraph 1, item (7) (act of transferring the custody of a child (under 18 years of age) to a person who is liable to commit an act violating punitive laws).

44. There are the following punitive laws for the prevention of child pornography:

(a) Article 175 of the Penal Code (act of distributing or selling an obscene writing, picture or other object or of publicly displaying the same or act of possessing the same for sale; imprisonment at forced labour for not more than two years or a fine of not more than 2,500,000 yen or a minor fine (1,000 yen up to 10,000 yen);

(b) Article 60, paragraph 2, of the Child Welfare Law (imprisonment at forced labour for not more than one year or a fine of not more than 300,000 yen), violation of article 34, item (9) (act of keeping a child (under 18 years of age) under one's control for purposes harmful to the child mentally or physically. (For instance, an act of keeping a child under one's control for the purpose of making pornographic objects involving the child constitutes a crime));

(c) Article 60, paragraph 2, of the Child Welfare Law (imprisonment at forced labour for not more than one year or a fine of not more than 300,000 yen), violation of article 34, paragraph 1, item (7) (act of transferring the custody of a child (under 18 years of age) to a person who is liable to commit an act violating punitive laws).

Liechtenstein

[Original: French]
[18 August 1992]

45. Because of the specific circumstances in the Principality of Liechtenstein, no legislative or administrative measures have been taken at national level to implement the Programme of Action.

Philippines

[Original: English]
[23 March 1993]

46. The Philippines, very much aware of the child being the most important asset of the nation, has declared as one of its policies to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation, discrimination and other conditions prejudicial to their development, consistent with the Convention on the Rights of the Child. In addition to existing measures contained under Presidential Decree No. 603 (The Child and Youth Welfare Code), which includes, among others, access to

educational opportunities, health and welfare services, the Government, in further strengthening its resolve towards wholesome child development, has specially designed a programme for prevention and deterrence of and crisis intervention in situations of child abuse, exploitation and discrimination which incorporates as well punitive and remedial measures. These courses of action are contained in the very significant and comprehensive piece of legislation recently enacted by the Government on 17 June 1992 as Republic Act No. 7610, entitled "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, Providing Penalties for its Violation and for Other Purposes". This law covers child trafficking. However, even before the passage of this law the Government, through its Department of Social Welfare, has been providing services to victims of child abuse in the form of protective custody, counselling, medical and dental services, residential care/temporary shelter, foster homes, adoption, legal services and educational and vocational services.

Poland

[Original: English]
[22 March 1993]

47. The phenomenon of trafficking in children, aimed at transplantation of organs, sale of children for their sexual abuse (prostitution and child pornography) as well as for their abuse in labour does not exist in Poland. However, some wrong practices in the field of international adoption may be noted. Since 1990 the number of cases concerning the adoption of Polish children abroad has significantly increased. It is suspected that some parents as well as other persons "offering" children for adoption (foster home personnel, lawyers) collect high payments for the "transaction". Action against "incorrect" adoptions abroad is handicapped by insufficient legal regulations in the Family and Custody Code. Until now, such provisions were not necessary as the phenomenon of the sale of children for adoption virtually did not exist in Poland. The Ministry of Justice has sent a bill to the Parliament with the aim of amending the Family and Custody Code in this respect.

48. Information is scarce as to the action taken by governmental and non-governmental bodies to prevent the phenomenon and to implement the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography; it is therefore impossible to evaluate the report of the Working Group.

49. Criminal law penalizes "lustful acts with a minor up to 15 years old" (art. 176 of the Criminal Code) as well as sexual acts while in the presence of a minor up to 15 years old (art. 177). Dissemination, production, storage, consignment or transport of publications, printed matter or pictures of a pornographic nature are also prohibited (art. 173).

50. Transitional provisions in the Criminal Code (law of 19 April 1969, Dziennik Ustaw (Journal of Law) No. 13, item 95) include article IX dealing

with criminalization of traffic in children for prostitution. This provision has not been incorporated into the Criminal Code, as such felonies have never been reported in Poland.

Spain

[Original: Spanish]
[18 February 1993]

51. The Directorate-General for the Legal Protection of Minors of the Ministry of Social Affairs of Spain made the following observations:

(a) There are various international provisions in this field. In addition to those already cited in the Programme of Action, the following conventions ratified by Spain should be taken into account:

(i) International Convention for the Suppression of the White Slave Traffic, signed at Paris on 4 May 1910;

(ii) International Agreement for the Suppression of the White Slave Traffic, signed at Paris on 18 May 1904;

(iii) Agreement for the Suppression of the Traffic in Children, Geneva, 30 September 1931;

(b) Although it does not specifically refer to the purchase and sale of children for purposes of adoption, the Spanish Penal Code penalizes trafficking in children (arts. 484, 485 and 486), abduction of children and child prostitution and sexual abuse (Book II, Title IX, of the Code), offences against sexual freedom (arts. 429 et seq., 452 (bis) "b", "e" and "g") and child pornography (arts. 431 and 432);

(c) Specific studies on the topic have also been carried out by international organizations. The International Catholic Child Bureau carried out an investigation into child pornography which found that legislation to protect children from material intended for adults is essential, albeit of limited application.

52. It is a proven fact that in countries as different as Chile and the United Kingdom of Great Britain and Northern Ireland, children have obtained pornographic material without ever having broken the law. The immediate conclusion to be drawn from this is the urgent need for satisfactory sex education programmes in schools, not confined to the physical aspects but also covering the emotional side of sexual relations. In order to be fully effective, the programmes will need to target parents as well as children.

53. The following specific observations are made:

(a) General. In our view, it is proper that this Programme, which covers various spheres, should be carried out by a number of different international organizations fully or partly concerned with children, coordinated by the Commission on Human Rights. We would support the organization of an international information campaign and the proclamation of

a world day for the abolition of contemporary forms of slavery. It would also be worthwhile to carry out studies and research into the exploitation of children, bearing in mind the different circumstances of children in different countries;

(b) Rehabilitation and reintegration. The authorities responsible for the protection of minors are drawing up plans and programmes for the integration of marginalized groups;

(c) International coordination. Spain has entered into a broad range of conventions relating to minors, noteworthy among which are the Council of Europe conventions on the custody of minors and on legal status and the Convention on the Civil Aspects of International Child Abduction of The Hague Conference. Although these conventions are not directly relevant to the topic under review, they are indirectly so, inasmuch as they help to alleviate and promote awareness of children's circumstances and win support for the law, which may help to avert potential threats. Nevertheless, Spain should develop even closer international relations, particularly with regard to trafficking in children;

(d) Sale of children. An effort should be made by the most developed countries to support countries facing the greatest difficulties in combating international trafficking in children;

(e) International adoption. The ratification of the Convention on the Rights of the Child will entail the introduction, in the developed countries, of machinery to prevent trafficking in children for adoption purposes and, indirectly, trafficking for other purposes. As to the question of financial gain, Spain intends to make an interpretive declaration to the effect that the "improper financial gain" referred to in the text of the Convention covers everything except the expenditure entailed by the transfer of the child;

(f) Child prostitution. This is one of the topics where international cooperation is most needed;

(g) Child pornography. As already observed, the Penal Code was amended with regard to the ill-treatment of children through Act 5/1988 of 9 June 1988, amending the wording of articles 431 and 432, under which: "Anyone who performs or causes to be performed by others pornographic acts involving minors"; and "Anyone who by any means disseminates, sells or exhibits pornographic material involving minors" is liable to punishment.

54. Only paragraph 27, which requests the postal and private courier services to detect and prevent the transmission of pornographic material, still needs amending since article 18.3 of the Spanish Constitution guarantees privacy of communications, in particular of postal, telegraphic and telephone communications, in the absence of a judicial decision.

Sri Lanka

[Original: English]
[21 October 1992]

55. Sri Lanka, with regard to this issue, states that in developing countries poverty is an underlying factor which causes all forms of abuses of vulnerable groups such as women and children. In Sri Lanka, customs and traditions which encourage the trafficking in and sale of children do not exist. The form of malpractice which has been existing for the last two decades is the sale of children for adoption by foreigners. The Government has therefore taken appropriate measures to amend the Adoption Law and bring about the necessary restriction to eliminate the "baby trade". No private unregistered institutions or persons can allocate adoptable children to foreign nationals under the new legislation which came into force on 11 September 1992. Only the Commissioner of Probation and Child Care has authority to allocate children to foreign applicants, and only children from State Receiving Homes and Registered Voluntary Homes can be adopted by foreign applicants. It is an offence to keep expectant mothers or children with mothers or without mothers for the purpose of adoption by anybody other than a person who is in charge of a State Receiving Home or a Registered Voluntary Home. Those who violate this provision of the law will be prosecuted and on conviction will be liable to a fine of not more than Rs. 20,000 or imprisonment for two years, or both fine and imprisonment.

56. Sri Lanka supports proposals 15 and 16. Public awareness, strict enforcement of the laws, collective responsibility and concerted action and commitment are needed to eradicate trafficking in children.

Thailand

[Original: English]
[15 December 1992]

57. Thailand informed the Working Group on Contemporary Forms of Slavery that the policy of prevention and suppression of traffic in children has been incorporated in the work plans of the key governmental agencies dealing with the problems of prostitution.

58. The Subcommittee under the National Committee for the Promotion and Coordination of Women's Affairs has proposed policies and measures which include intensification of the suppression of trafficking in children. Severe penalties have been proposed.

59. Thailand has also called for the inspection of passports held by children under 15 years of age. This is a measure aimed at effective prevention of sale of children for exploitation in illegal or immoral activities abroad, in accordance with the Cabinet's decision of 18 May 1977.

60. An ad hoc unit under the Police Department has been set up to combat traffic in persons to foreign countries. Within the Thai legal system, there

exists a number of laws which are designed to prevent trafficking in children for sexual purposes. Those that are directly designed to deal with the problem include the following:

(a) The sale of Women and Children Act (1928), which is still in force today, prohibits the bringing into and the taking out of Thailand women and children for the purposes of prostitution;

(b) The Pornography Act (1928);

(c) The Hotel Act of 1935;

(d) The (8th) Amendment of the Criminal Procedure Code (1987) is one of the most important legal instruments for the prevention and suppression of trafficking in women and children, and is directed specifically at the suppression of those who are engaged in the traffic in children.

61. The Entertainment Establishment Act (1966) defines the attributes of those who are eligible to apply for the establishment of entertainment places to exclude those who have broken laws on the sale of children.

62. Parents involved in selling their children also face punishment under the law.

63. The successive Governments of Thailand continue to tackle the problem of the traffic in children through legislative actions, law enforcement activities and a variety of socially-oriented programmes.

64. The Government of Thailand refers to its "National Declaration on Children", adopted on 30-31 August 1990 by the First National Assembly, and subsequently endorsed by the Council of Ministers of Thailand on 13 August 1991. It is the official proclamation of national policy on child development to be implemented by all related governmental and non-governmental organizations in Thailand.

Yugoslavia

[Original: English]
[11 March 1993]

65. As far as measures designed to prevent the sale of children, child prostitution and child pornography are concerned, article 155 of the Criminal Code of the Federal Republic of Yugoslavia envisages more severe penalties for the sale of a supported person or a person by his/her parents or guardian.

66. On the sale of children, it should be pointed out that, in the former Socialist Federal Republic of Yugoslavia, this problem was most evident in Macedonia and Kosovo. The most widespread obstacle in conducting criminal proceedings against perpetrators was their constant change of place of residence, which frequently made them unavailable to the prosecution authorities.

67. Furthermore, the Criminal Code of the Federal Republic of Yugoslavia, in its article 251, stipulates as a criminal offence procurement, under which so-called white slavery, if a minor female child is involved, is punishable by imprisonment from 1 to 10 years.

68. In keeping with international instruments and recommendations made by the Secretary-General, the Criminal Code of the Socialist Federal Republic of Yugoslavia was refined in 1990 to criminalize the presentation of pornography to a minor under 14 years of age and to make punishable the presentation, public exposure or otherwise making available pamphlets, pictures, photographs, audiovisual or other material with a pornographic content, or a pornographic show. The penalty stipulated by law for this criminal offence is imprisonment of one year or a fine.

69. In addition, the criminal laws of the Republics of Serbia and Montenegro provide in their articles 111 and 100 respectively that procurement for carnal knowledge is a criminal act. If the subject of this criminal offence is a person over 14 years of age, the penalty is imprisonment from three months to five years, while providing carnal knowledge with a minor is punished by imprisonment up to three years. The same sentence is also imposed for procurement or enabling carnal knowledge for a reward.

70. In order to prevent and suppress the prostitution of minors, beside the above-mentioned penalties the Law on Public Order and Peace of the Republic of Serbia provides for penalties for petty offences. This law stipulates that a person providing space to a minor for the purpose of prostitution shall be sentenced to imprisonment of up to 60 days, and if the perpetrator is a parent or guardian of the minor concerned, he or she shall be fined or sentenced to imprisonment of up to 30 days. The Law on Public Order and Peace of the Republic of Montenegro defines the same penalty for this type of criminal offence, including a fine for a parent or guardian of a minor engaged in prostitution.

71. In conclusion, it should be pointed out that in the 1990-1991 period no criminal offence under article 252 of the Criminal Code of the Federal Republic of Yugoslavia was reported in the Republics of Serbia and Montenegro.

72. With reference to paragraphs 5, 7 and 20 of Sub-Commission resolution 1992/2 entitled "Report of the Working Group on Contemporary Forms of Slavery", the Government of the Federal Republic of Yugoslavia wishes to draw attention to the following.

73. Protection of children from sale, prostitution and pornography is provided for by the Constitution of the Federal Republic of Yugoslavia, republican constitutions and laws and other rules and regulations concerning criminal and family legislation.

74. Abuse of children for the purpose of prostitution, use in pornography and sale of children is sporadic, while it is most frequent for the purpose of theft and begging. This is primarily the case within the Romany population and, in the last few years, this problem has assumed large proportions. However, after appropriate measures have been taken by the Ministry of Internal Affairs of Serbia in cooperation with social care centres, this

problem has been reduced so that thus far only one criminal charge has been brought against a person who took two Romany minors to Italy and sold them there to an unknown person.

75. Following reports that criminal activities of Romany minors have intensified in the countries of Western Europe, Italy in particular, it has been established that they were taken abroad by their parents or with their consent with the intention to engage in such activities. Accordingly, the parental rights of such parents have been significantly limited or such parents have been deprived of their parental rights and responsibilities.

76. According to the information available in the Ministry of Internal Affairs of the Republic of Serbia, 11 requests for instituting infraction proceedings were filed in the period between 1987 and 1992 against 11 minors because of prostitution. The relatively small number of cases is an indication that child prostitution and child pornography are isolated rather than general phenomena.

II. UNITED NATIONS BODIES

Economic Commission for Latin America and the Caribbean

[Original: English]
[21 August 1992]

77. The Economic Commission for Latin America and the Caribbean states that the issue of the sale of children falls outside the areas of its work. Owing to its importance, however, it will be one of the issues considered when designing policies and programmes on social affairs, particularly those referring to the family.

III. SPECIALIZED AGENCIES

United Nations Educational, Scientific and Cultural Organization

[Original: English]
[8 October 1992]

78. The United Nations Educational, Scientific and Cultural Organization informed the Working Group on Contemporary Forms of Slavery that its secretariat has just concluded three studies on child prostitution and education. The studies were conducted by specialists from Colombia, Benin and Thailand. It is also hoped that they will constitute a working document for a future joint meeting with UNICEF to take place, possibly in 1993.

World Tourism Organization

[Original: English]
[5 August 1992]

79. The World Tourism Organization (WTO) informed the Working Group on Contemporary Forms of Slavery of its readiness to cooperate with the

Commission on Human Rights in trying to tackle several problems addressed by the Working Group, including child prostitution and child pornography.

80. WTO draws the attention of the Working Group to the Tourism Bill of Rights and Tourist Code, adopted in 1985, which sets forth standards of conduct for States, tourism professionals and tourists with regard to this and other related issues.

81. WTO draws the attention of the Working Group to some of the standards of conduct set forth in this document, whereby:

(a) States are reminded of the need to prevent any possibility of using tourism to exploit others for prostitution purposes (art. IV.8 (e));

(b) Tourism professionals and suppliers of tourism and travel services are asked to refrain from encouraging the use of tourism for all forms of exploitation of others (art. VIII.3);

(c) Tourists themselves are requested to refrain from exploiting others for prostitution purposes (art. XI (d)).

82. With regard to the text of the draft programme of action for the Prevention of Traffic in persons and the exploitation of the prostitution of others and the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, WTO agrees, in principle, with their contents and should like to comment as follows.

83. WTO fully supports the suggestion made in paragraph 12, annex I to resolution 1992/36 proclaiming a world day for the abolition of slavery.

84. WTO draws attention to the name of its organization, mentioned in Commission on Human Rights resolution 1992/74 I, paragraph 3, which should read "World Tourism Organization" and not "International Tourism Organization".

85. WTO agrees with the proposal made in paragraphs 30 of annex I to resolution 1992/36 and 47 of the annex to resolution 1992/74.

86. WTO has made some reservations to the proposal made in paragraph 16 of Sub-Commission resolution 1992/2 II and paragraph 48 of the annex to Commission resolution 1992/74 II, that is, WTO convening a meeting, for two main reasons:

(a) Such a meeting is not contemplated in the programme of work or budget of WTO. The WTO secretariat cannot organize such a meeting without prior authorization from our General Assembly; and

(b) More fundamentally, it is doubtful that yet another conference would bring about the desired effects in the short and the long term.

87. WTO believes in adopting strong measures and taking concrete steps, namely:

(a) Enforcing the necessary legislation, as already suggested by the draft programmes of action;

(b) Strengthening and diversifying the tourism industry of countries affected by this problem;

(c) Improving education and training at all levels, especially for women, etc.

These steps could be more effective than convening a conference to discuss an already well-known and painful subject. This is the type of strategy the organization recommends to developing countries through its activities in the field of technical cooperation.

88. WTO should also like to underline that the very nature of tourism is to contribute to economic development and prosperity and to foster international peace and understanding. This, indeed, brings about the encounter of peoples. Convening a conference solely devoted to the problem of sex tourism would lead to identifying tourism with the scourge we are trying to combat. Consequently, WTO would suggest a different wording for paragraphs 31 and 48 of the annexes to resolutions 1992/36 and 1992/74, along these lines:

> "The World Tourism Organization should be encouraged, in the context of the progressive implementation of the provisions of the Tourism Bill of Rights and Tourist Code adopted by the Sixth General Assembly in 1985, to develop further the range of its activities, viz.: consumer information, in order to contribute to prevent such practices."

89. Finally, WTO would like to reiterate its readiness to cooperate and lend its full support to efforts to put an end to this form of exploitation.

IV. INTERGOVERNMENTAL ORGANIZATIONS

Organization of American States

[Original: English]
[19 August 1992]

90. The General Secretariat wishes to inform the United Nations Assistant Secretary-General for Human Rights that the request concerning several issues, including the sale of children, has been forwarded to the Executive Secretariat of the Inter-American Commission on Human Rights for information and appropriate action.

V. NON-GOVERNMENTAL ORGANIZATIONS

World Muslim Congress

[Original: English]
[25 August 1992]

91. The World Muslim Congress informs the Working Group on Contemporary Forms of Slavery that, at present, they have no programme dealing with the issue of the sale of children.